



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 210712-0146]

RIN 0648-BH65

Pacific Island Fisheries; Modifications to the American Samoa Longline Fishery Limited Entry Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to modify the American Samoa longline fishery limited entry program to consolidate vessel class sizes, modify permit eligibility requirements, and reduce the minimum harvest requirements for small vessels. The intent of this proposed rule is to reduce regulatory barriers that may be limiting small vessel participation in the fishery, and provide for sustained community and indigenous American Samoan participation in the fishery. This proposed rule also makes several administrative updates to remove outdated regulations.

DATES: NMFS must receive comments by **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments on this proposed rule, identified by NOAA-NMFS-2018-0023, by either of the following methods:

- *Electronic Submission:* Submit all electronic comments via the Federal e-Rulemaking Portal. Go to <http://www.regulations.gov> and enter NOAA-NMFS-2018-0023 in the Search box, click the "Comment" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Send written comments to Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1845 Wasp Blvd. Bldg. 176, Honolulu, HI 96818.

Instructions: NMFS may not consider comments sent by any other method, to any other address or individual, or received after the end of the comment period. All comments received are a part of the public record, and NMFS will generally post them for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

The Western Pacific Fishery Management Council (Council) prepared Amendment 9, which includes a draft environmental assessment (EA) and Regulatory Impact Review. Copies of Amendment 9 and other supporting documents are available at <https://www.regulations.gov>, or from the

Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813,
tel 808-522-8220, www.wpcouncil.org.

FOR FURTHER INFORMATION CONTACT: Kate Taylor, NMFS PIR
Sustainable Fisheries, 808-725-5182.

SUPPLEMENTARY INFORMATION: The Council and NMFS manage the American Samoa longline fishery under the FEP and implementing Federal regulations. The fishery primarily targets albacore, which are sold frozen to the fish processing industry in Pago Pago, American Samoa. During the 1980s and 1990s, the longline fleet was mainly comprised of alia, which are locally-built catamarans between 24 and 38 ft in length. Longline fishing from an alia is a small-scale operation; fishermen set about 350 hooks per set and haul the gear with hand-operated reels. Fishing trips usually last one day because alia vessels are not equipped to freeze catch onboard.

In the early 2000s, the longline fishery expanded rapidly with the influx of large (over 50 ft) conventional monohull vessels similar to the type used in the Hawaii-based longline fishery, including some vessels from Hawaii. These vessels are able to travel farther from shore and stay out longer, deploy 30-40 miles of mainline and 20,000 hooks per set, and could freeze catch onboard. From 2000 to 2004 the number of large vessels increased from 4 to 29 while the number of active alia vessels decreased from 37 to 9.

In 2004, in response to alia fishermen's concerns that a continued influx of large vessels could result in adverse impacts to local stocks and the small vessel fleet, the Council established, and NMFS implemented, a limited entry program for the fishery (70 FR 29646, May 24, 2005). Qualification for a longline fishery permit required an individual to document ownership of a vessel that was used to legally harvest and land pelagic management unit species (pelagic MUS) with longline gear in the U.S. EEZ around American Samoa prior to March 22, 2002. Initial permit holders were also required to be U.S. citizens or nationals. The longline fishery permits were divided into four vessel size categories: Class A (\leq 40 ft), Class B (between 40 and 50 ft), Class C ($>$ 50 ft and $<$ 70 ft), and Class D ($>$ 70 ft). The limited entry program is limited to 60 permits annually (see Table 1).

Table 1. Maximum number of available permits, number of permits issued in 2010 and 2019, and number of active vessels in 2019.

Vessel Size Class	Maximum Available Permits	Permits Issued in 2010	Permits Issued in 2019	Active Vessels in 2019
A 40 ft or less	16	12	4	3
B 40.1 ft - 50 ft	6	0	4	0
C 50.1 ft - 70 ft'	12	12	12	5
D	26	26	26	10

More than 70 ft				
Total	60	50	46	18

An American Samoa longline limited access permit of any size class, except Class A, may be transferred to any person with documented participation in the pelagic longline fishery in the EEZ around American Samoa, or a western Pacific community located in American Samoa that meets the criteria under Section 305(2) of the Magnuson-Stevens Act (Community Development Program). A Class A permit holder may transfer a permit to any person with documented participation in the pelagic longline fishery on a Class A size vessel in the EEZ around American Samoa before March 22, 2002, a western Pacific community located in American Samoa that meets the criteria under Section 305(2) of the Magnuson-Stevens Act (Community Development Program), or a family member of the permit holder.

Permits are valid for three years from the date of issue. Current regulations specify requirements to renew a limited access permit. Class A and B permit holders are required to land (in American Samoa) a minimum of 1,000 lb (454 kg) of pelagic MUS (harvested with longline gear in the U.S. EEZ around American Samoa) over three consecutive calendar years. Class C and D permit holders are required to land (in American Samoa) a minimum of 5,000 lb (2,268 kg) of pelagic MUS (harvested with longline gear in the U.S. EEZ around American Samoa) over three consecutive

calendar years. In the event that a permit holder does not make the minimum landings within three consecutive years, the permit reverts to NMFS. NMFS may then announce the availability of a permit and issue the permit to a qualified applicant, with the priority given to the applicant with the earliest participation in the fishery onboard a Class A, B, C, or D vessel, in that order.

Only a few small vessels have been active in the fishery since 2007. Participation by large vessels was somewhat stable from 2001 through 2010, but has declined and remained below 20 active vessels annually since then. This proposed rule would change the current American Samoa longline permit classifications, eligibility criteria, and minimum harvest requirements to reduce barriers to participation in the fishery by smaller vessels and to maintain small vessel participation in the fishery, as described below.

Modification to Vessel Size Classification

This proposed rule would reduce the number of vessel size classes from four to two. Class A and B vessels (less than 50 ft) would be classified as Small Vessels and Class C and D vessels (equal to or greater than 50 ft) would be classified as Large Vessels. NMFS would convert all current permits into one of the two new classes, initially resulting in 21 small vessel permits and 39 large vessel permits. The program would continue to be limited to 60

permits. Consolidation of the permit classes is intended to simplify administration of the limited entry program.

Modification to Permit Eligibility Criteria

This proposed rule would restrict permit eligibility to U.S. citizens and nationals only. This would apply to current permits holders, future applicants, or in the case of permit transfers. This proposed rule would also eliminate the criteria for having documented fishery participation to be eligible for a permit. However, it would not change the priority ranking system if there is competition between two or more applicants for a permit (i.e., priority given to the smallest vessel and then determined by documented participation in the fishery).

Currently, there are likely younger fishermen in American Samoa who own vessels in the small vessel class, but are restricted from participating in the fishery because they do not have prior history. For example, it has been 12 years since NMFS implemented the longline limited entry program, and some of the fishermen who had documented participation in the fishery have since passed away. Their children may be interested in joining the fishery, but regulations may be excluding them from the fishery because they do not have documented participation. The Council and NMFS expect that removing the requirement for permit holders to document history in the fishery will expand opportunities for citizens and U.S. nationals to enter the

fishery. Such opportunities would be greatest for small vessel owners in American Samoa.

Modification to Minimum Harvest Size Requirements

This proposed rule would reduce the minimum harvest requirement for small vessels to 500 lb (227 kg) of pelagic MUS within a 3-year period. The 5,000 lb (2,268 kg). Harvest for the large vessels would not be modified. However, this proposed rule would eliminate the requirement that the minimum harvests be caught within the U.S. EEZ around American Samoa. The requirement for the minimum harvest amounts to be landed in American Samoa would not be modified.

In the event of a permit transfer, if the minimum harvest amount has not been caught at the time of transfer, the minimum harvest period would not restart. Instead, the new permit holder would be required to meet the harvest requirement based on the following formula: the product of percentage of time left within the three-year permit period and the minimum harvest amount.

For example, the original permit holder, Person A, has 1.5 years left on the three-year permit (50% of the total time) at the time of transfer to Person B. Person A has harvested 300 lb (136 kg) of the 500 lb (new, 227 kg) minimum harvest amount. Under this proposed rule, the minimum harvest amount applied to Person B at time of transfer is computed as:

50 percent (or 0.5) x 500 lb (227 kg) = 250 lb

(113kg)

Therefore, Person B would need to catch 250 lb (113 kg) within the remaining 1.5 years. The catch required by Person B is independent from the amount Person A caught.

Reducing the three-year minimum harvest requirement could result in higher permit retention rates over time for those small vessels that may be having some economic or other difficulty to meet the minimum harvest requirements and allow those permit holders to renew their permits when they otherwise would have to forfeit them. Additionally, reducing the minimum harvest requirement could provide additional encouragement for those thinking about entering the small boat fleet.

The proposed rule would also make several administrative updates to remove outdated American Samoa longline limited entry program regulations. Specifically, this proposed rule removes regulations describing the original application process and the issuance of permits by vessel class in the first three years of the program. All other management measures will continue to apply in the American Samoa Limited entry Longline fishery.

NMFS invites public comments on the proposed action, and specifically invites comments that address the impact of this proposed action on cultural fishing in American Samoa. NMFS must receive any comments by the date provided

in the **DATES** section. In addition, NMFS is soliciting comments on proposed Amendment 9, as stated in the Notice of Availability (NOA) published on June 30, 2021 (86 FR 34711). NMFS must receive comments on the NOA by August 30, 2021. NMFS may not consider any comments not postmarked or otherwise transmitted by that date. NMFS will consider public comments received in response to the request for comments on the NOA and to the request for comments in this proposed rule in the decision to approve, disapprove, or partially approve Amendment 9.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed action is consistent with the FEP, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

Certification of Finding of No Significant Impact on Substantial Number of Small Entities

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. A description of the proposed action, why it is being considered, and the legal

basis for it are contained in the preamble to this proposed rule.

This proposed action would directly apply to longline vessels federally permitted under the Pelagics FEP, specifically American Samoa longline permit holders. The longline fishery based in American Samoa is a limited access fishery with a maximum of 60 vessels under the federal permit program. Vessels range in size from under 40 to over 70 ft. long. In 2019, NMFS issued 50 American Samoa longline permits, with 17 of these vessels actively participating in the fishery. Only three of the active vessels were Class A or B vessels. The total longline fleet revenue (estimated landed value) in 2019 was \$3.9 million, and albacore composed of over 89% of the total landed value. Other main species included yellowfin, bigeye, skipjack, and wahoo. With 17 active longline vessels in 2019, the ex-vessel value of pelagic fish caught by the American Samoa fishery averaged almost \$230,000 per vessel.

NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for

all its affiliated operations worldwide. Based on available information, NMFS has determined that all vessels subject to the proposed action are small entities, i.e., they are engaged in the business of finfish harvesting (NAICS code 114111), are independently owned or operated, are not dominant in their field of operation, and have annual gross receipts not in excess of \$11 million. Even though this proposed action would apply to a substantial number of vessels, the implementation of this action would not result in significant adverse economic impact to individual vessels.

The proposed action does not duplicate, overlap, or conflict with other Federal rules and is not expected to have significant impact on small entities (as discussed above), organizations or government jurisdictions. There does not appear to be disproportionate adverse economic impacts from the proposed rule based on home port, gear type, or relative vessel size. The proposed rule will not place a substantial number of small entities, or any segment of small entities, at a significant competitive disadvantage to large entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 665

Administrative practice and procedure, American Samoa, Fisheries, Fishing, longline, Pacific Islands, Permits.

Dated: July 13, 2021.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 665 as follows:

PART 665 -- FISHERIES IN THE WESTERN PACIFIC

1. The authority citation for 50 CFR part 665 continues to read as follows:

Authority: 16 U.S.C. 1801, *et seq.*

2. In § 665.12, add the definition of "Small vessel" in alphabetical order, to read as follows:

§ 665.12 Definitions.

* * * * *

Small vessel means, as used in this part, any vessel less than 50 ft (15.2 m) in length overall.

* * * * *

3. In § 665.19, revise paragraph (a)(2) to read as follows:

§ 665.19 Vessel Monitoring System.

(a) * * *

(2) American Samoa Large Vessel longline limited entry permit issued pursuant to § 665.801(c);

* * * * *

4. In § 665.802, revise paragraph (x) to read as follows:

§ 665.802 Prohibitions.

* * * * *

(x) Fail to comply with a term or condition governing the observer program established in § 665.808, if using a vessel registered for use with a Hawaii longline limited access permit, or a large vessel registered for use with an American Samoa longline limited access permit to fish for western Pacific pelagic MUS using longline gear.

* * * * *

5. Revise § 665.816 to read as follows:

§ 665.816 American Samoa longline limited entry program.

(a) *General.* Under § 665.801(c), certain U.S. vessels are required to be registered for use under a valid American Samoa longline limited access permit. Under the American Samoa Longline Limited Entry Program, the maximum number of longline fishing permits available is limited to 60 permits annually.

(b) *Terminology.* For purposes of this section, the following terms have these meanings:

(1) *Documented participation* means participation proved by, but not necessarily limited to, a properly submitted NMFS or American Samoa logbook, an American Samoa creel survey record, a delivery or payment record from an American Samoa-based cannery, retailer or wholesaler, an American Samoa tax record, an individual wage record, ownership title, vessel registration, or other official documents showing:

(i) Ownership of a vessel that was used to fish in the EEZ around American Samoa, or

(ii) Evidence of work on a fishing trip during which longline gear was used to harvest western Pacific pelagic MUS in the EEZ around American Samoa. If the applicant does not possess the necessary documentation of evidence of work on a fishing trip based on records available only from NMFS or the Government of American Samoa (e.g., creel survey record or logbook), the applicant may issue a request to PIRO to obtain such records from the appropriate agencies, if available. The applicant should provide sufficient information on the fishing trip to allow PIRO to retrieve the records.

(2) *Family* means those people related by blood, marriage, and formal or informal adoption.

(c) *Vessel size classes*. The Regional Administrator shall issue American Samoa longline limited access permits in the following size classes:

(1) Small vessel, which is less than 50 ft (15.2 m) LOA.

(2) Large vessel, which is equal to or over 50 ft (15.2 m) LOA.

(d) *Permit eligibility.* Any U.S. national or U.S. citizen or company, partnership, or corporation is eligible for an American Samoa longline limited access permit.

(e) *Permit issuance.* (1) If the number of permits issued falls below the maximum number of permits allowed, the Regional Administrator shall publish a notice in the FEDERAL REGISTER and use other means to notify prospective applicants of any available permit(s) in each class. Any application for issuance of a permit must be submitted to PIRO no later than 120 days after the date of publication of the notice on the availability of additional permits in the FEDERAL REGISTER. The Regional Administrator shall issue permits to persons according to the following priority standard:

(i) Priority accrues to the person with the earliest documented participation in the pelagic longline fishery in the EEZ around American Samoa from smallest to largest vessel.

(ii) In the event of a tie in the priority ranking between two or more applicants, the applicant whose second documented participation in the pelagic longline fishery in the EEZ around American Samoa is first in time will be

ranked first in priority. If there is still a tie between two or more applicants, the Regional Administrator will select the successful applicant by an impartial lottery.

(2) Applications must be made, and application fees paid, in accordance with §§ 665.13(c)(1), 665.13(d), and 665.13(f)(2). If the applicant is any entity other than a sole owner, the application must be accompanied by a supplementary information sheet, obtained from the Assistant Regional Administrator for Sustainable Fisheries, containing the names and mailing addresses of all owners, partners, and corporate officers that comprise ownership of the vessel for which the permit application is prepared.

(3) Within 30 days of receipt of a completed application, the Assistant Regional Administrator for Sustainable Fisheries shall make a decision on whether the applicant qualifies for a permit and will notify the successful applicant by a dated letter. The successful applicant must register a vessel of appropriate size to the permit within 120 days of the date of the letter of notification. The successful applicant must also submit a supplementary information sheet, obtained from the Assistant Regional Administrator for Sustainable Fisheries, containing the name and mailing address of the owner of the vessel to which the permit is registered. If the registered vessel is owned by any entity other than a sole owner, the names and mailing addresses of all owners, partners, and

corporate officers must be included. If the successful applicant fails to register a vessel to the permit within 120 days of the date of the letter of notification, the Assistant Regional Administrator for Sustainable Fisheries shall issue a letter of notification to the next person on the priority list or, in the event that there are no more prospective applicants on the priority list, re-start the issuance process pursuant to paragraph (e)(1) of this section. Any person who fails to register the permit to a vessel under this paragraph (e)(3) within 120 days shall not be eligible to apply for a permit for 6 months from the date those 120 days expired.

(4) An appeal of a denial of an application for a permit shall be processed in accordance with § 665.801(o).

(f) *Permit transfer.* The holder of an American Samoa longline limited access permit may transfer the permit to another individual, partnership, corporation, or other entity as described in this section. Applications for permit transfers must be submitted to the Regional Administrator within 30 days of the transfer date. If the applicant is any entity other than a sole owner, the application must be accompanied by a supplementary information sheet, obtained from the Assistant Regional Administrator for Sustainable Fisheries, containing the names and mailing addresses of all owners, partners, and corporate officers. After such an application has been

made, the permit is not valid for use by the new permit holder until the Regional Administrator has issued the permit in the new permit holder's name under § 665.13(c).

(1) An American Samoa longline limited access permit may be transferred (by sale, gift, bequest, intestate succession, barter, or trade) to only the following persons:

(i) A western Pacific community located in American Samoa that meets the criteria set forth in §3 05(I)(2) of the Magnuson-Stevens Act, 16 U.S.C. 1855(I)(2), and its implementing regulations, or

(ii) Any U.S. citizens or national.

(2) Additionally, an American Samoa longline limited access small vessel permit may also be transferred (by sale, gift, bequest, intestate succession, barter, or trade) to a family member of the permit holder.

(g) *Permit renewal.* (1) An American Samoa longline limited access permit will not be renewed following 3 consecutive calendar years (beginning with the year after the permit was issued in the name of the current permit holder) in which the vessel(s) to which it is registered landed less than:

(i) Small vessel: a total of 500 lb (227 kg) of western Pacific pelagic MUS harvested using longline gear, or

(ii) Large vessel: a total of 5,000 lb (2,268 kg) of western Pacific pelagic MUS harvested using longline gear.

(2) For all vessels, the minimum harvest amount must be landed in American Samoa.

(3) In the event of a transfer, the new permit holder would be required to meet the harvest requirement based on the following formula: Remaining harvest amount = product of percentage of time left within the 3-year permit period and the minimum harvest amount for that size vessel.

(h) *Concentration of permits.* No more than 10 percent of the maximum number of permits, of both size classes combined, may be held by the same permit holder. Fractional interest will be counted as a full permit for calculating whether the 10-percent standard has been reached.

[FR Doc. 2021-15171 Filed: 7/16/2021 8:45 am; Publication Date: 7/19/2021]